

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

IN RE MASSACHUSETTS DIET DRUG LITIGATION

Andrus, et al. v. Indevus Pharmaceuticals, Inc., et al.

Civil Action No. 04-10911 GAO

Holly Marie Malzahn and Frederick Charles Malzahn; Kathleen Adele Ailey; Suzanne Ayer; Donna Fay Bische; Jacqueline Brulee; Mary Lou Doeppenschmidt; Fernando I. Dominguez and Mary O. Dominguez; Frederic B. Eisenberg and Patricia Eisenberg; Bert L. Head and Cheryl Head; Connie Klein and Bruce A. Klein; Suzan M. Lamar and Gary Phillip Lamar; Patti J. Luebbert and Dennis C. Luebbert, Sr.; Judith L. Moon and Billy D. Moon; Peggy Moon; Vickie Schultz-Crow and Lester Don Crow; Dorothy Steward; Sylvia B. Thomason; and Theresa A. Waymire,

Plaintiffs.

v.

Indevus Pharmaceuticals, Inc., F/K/A Interneuron Pharmaceuticals, Inc.; Wyeth, Inc., F/K/A American Home Products Corporation; Wyeth Pharmaceuticals, Inc F/K/A Wyeth-Ayerst Pharmaceuticals, Inc., A Division Of American Home Products Corporation; and Boehringer Ingelheim Pharmaceuticals, Inc.; Patti A. Barker; Gary A. Jones; Kenneth E. Jones; John W. Walker; Keith Cunniff; John E. Mitchell; Susan K. Atherton; Keith H. Kraps; M. Gilberto Olivarez; Angela M. Johnson; Rafael Sanchez; Jill M. Hicks; Susan G. Hanover; Joseph Hartnett; James J. Sgroi, Jr.; Todd E. Meredith; Kari Plaschke Scott; Craig S. Englert; Mitchell J. Hanning; Monica T. Gulyas; Robert L. McCann; Timothy S. Smith; Evangelin Zelios; J. Don Preston; Daniel B. Burke; Mindy N. Fey; A. Durwood Neie; Rodney L. Scott; D. Craig McIntyre; Barbara St. George; Madeline Andress; Andrew B. Biaggi; and Franchesca V. Williams,

Defendants.

**PLAINTIFFS'
MOTION TO
REMAND**

Civil Action No.
04-11428-GAO

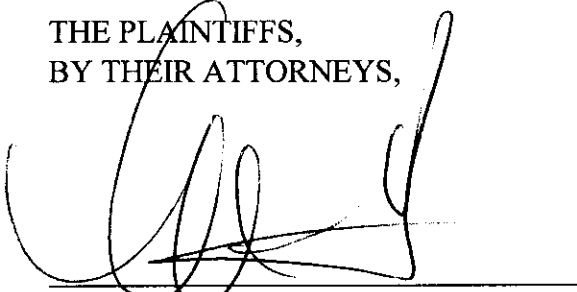
PLAINTIFFS' MOTION TO REMAND

Pursuant to 28 U.S.C. § 1447(c), plaintiffs hereby seek to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County. As grounds for this motion, plaintiffs state that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Pharmaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as “Wyeth”), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc. f/k/a Interneuron Pharmaceuticals, Inc. (“Indevus”), is a resident of Massachusetts and has not been fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the allegations in the complaint show that plaintiffs have far more than a colorable claims against Indevus.

In support of their motion, plaintiffs have filed a memorandum. In the event that their motion is granted, plaintiffs request that this Court issue an order requiring that the removing defendants pay plaintiffs’ just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

THE PLAINTIFFS,
BY THEIR ATTORNEYS,

A large, stylized handwritten signature in black ink, appearing to read 'David C. Strouss', is written over a horizontal line.

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DATED: July 23, 2004.

CERTIFICATE OF SERVICE

This is to certify that I have this day served Plaintiffs' Motion for Remand and Plaintiffs' Memorandum in Support of Their Motion for Remand upon all parties to the above-captioned action by first class, postage prepaid mail to the following:

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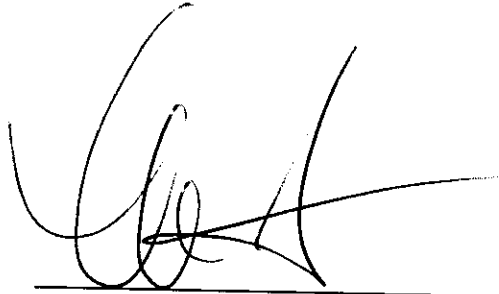
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This 23rd day of July, 2004.

A handwritten signature in black ink, appearing to read 'David C. Strouss', written over a horizontal line.

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